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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,282	08/21/2006	Danuta Ciok	2003004-US	1573
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COLOPLAST A/S				
Attention: Corporate Patents				
Holtedam 1				
DK-3050 Humleback,				
DENMARK				
EXAMINER				
KIDWELL, MICHELE M				
ART UNIT		PAPER NUMBER		
3761				
NOTIFICATION DATE		DELIVERY MODE		
05/26/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@coloplast.com
dkbvd@coloplast.com

Office Action Summary

Application No.

10/551,282

Applicant(s)

CIOK ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5, 9, 10, 13, 14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 9, 10, 13, 14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date 1/8/10
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 13 – 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leise, Jr. (US 5,401,264) in view of EP 1 254 647

With respect to claims 1 and 13 – 14, Leise, Jr. (hereinafter "Leise") discloses a one piece ostomy appliance comprising a bag having a front and rear wall with an opening disposed therein (figure 1), and an adhesive wafer (col. 2, line 67 to col. 3, line 3) having a hole alignable with the opening (figure 1), and including a first and second side wherein the second side includes first and second portions (figures 1 - 5) and an adhesive layer (col. 3, line 10) positioned to selectively secure the second portion of the wafer to the rear wall.

The difference between Leise and claim 1 is the provision that the second portion is unattached to the rear wall of the bag and that the adhesive layer includes a release liner.

Leise discloses that the attachment of the wafer to the edge of the rear wall may include resealable coupling means as set forth in col. 3, lines 7 – 14. In this case, the second portion may be selectively secured, permanently secured and/or unattached to the rear wall.

EP 1 254 647 (hereinafter '647) provides an ostomy appliance with a release liner covering the adhesive layer as set forth in the abstract.

It would have been obvious to one of ordinary skill in the art to provide the adhesive layer of Leise with a release liner because the use of such protects the adhesive surface prior to use as taught by '647 in col. 3, lines 4 – 6.

Inasmuch as the applicant has provided a "one piece" ostomy device (i.e., bag and wafer), the examiner contends that Leise in view of '647 provides the same.

Likewise, the release liner functions as claimed because the release liner covers the skin facing side (abstract) and therefore does not interfere with the bond between the wafer and the bag.

Claims 4 – 5, 9 – 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leise, Jr. (US 5,401,264) in view of Thomas (4,865,594)

The difference between Leise and claim 4 is the provision that the ostomy appliance comprises a stiffening element.

Thomas provides the ostomy appliance with a stiffening element to which first and second parts of the bag are secured as set forth in col. 3, lines 23 – 41.

It would have been obvious to one of ordinary skill in the art to provide the ostomy appliance of Leise with a stiffening element as taught by Thomas because the use of such facilitates adhesion and/or reduces skin irritation as taught by Thomas in col. 3, lines 16 – 41.

With reference to claims 5 and 9 – 10, see col. 3, lines 16 – 41 and figure 3 of Thomas.

With respect to claim 16, see the rejection of claim 4.

Response to Arguments

Applicant's arguments filed February 16, 2010 have been fully considered but they are not persuasive.

Inasmuch as the applicant has provided a "one piece" ostomy device (i.e., bag and wafer), the examiner contends that Leise in view of '647 provides the same.

Furthermore, it is noted that the use of the open ended language "comprising", allows for the inclusion of additional elements.

Even further, the examiner relies on the disclosure of Leise that the invention is a "one piece appliance" (col. 3, lines 3 – 5). The applicant argues that no embodiment is presented, but the examiner disagrees as the reference clearly states that the illustration given is a one piece appliance.

Nevertheless, if one of ordinary skill in the art is able to "at once envisage" the specific embodiment within the generic teaching, the embodiment is anticipated. See MPEP 2131.02.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is

Art Unit: 3761

571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/
Primary Examiner, Art Unit 3761